

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Libco, Inc.)	Facility ID No. 70713
Licensee of WALB(TV), Albany, GA)	NAL/Acct. No. 064142003
)	FRN: 0005087408

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: October 19, 2005

Released: October 26, 2005

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Acting Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Albany, Georgia. We find that Libco, Inc., licensee of station WALB(TV), Albany, Georgia, willfully and repeatedly violated Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Commission's Rules (Rules) by failing to place in the station's public inspection file TV issues/programs lists and records concerning compliance with the children's programming commercial limits.¹ For the reasons set forth below, we find Libco, Inc. apparently liable in the amount of ten thousand dollars (\$10,000) for its violation of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Rules.

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

3. Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a

¹ 47 C.F.R. §§ 73.3526(e)(11)(i) and 73.3526(e)(11)(ii).

public inspection file containing specific types of information related to station operations.² As set forth in Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Further, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits and TV issues/programs lists in the public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³

4. On November 30, 2004, the licensee filed a license renewal application (FCC Form 303-S) for station WALB(TV), Albany, Georgia (File No. BRCT-20041130AOY). In response to Section IV, Question 3 of that application, the licensee certified that, during the previous license term, station WALB(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to that application, the licensee indicates that in January 2001, the licensee discovered that records concerning compliance with the commercial limits on children's programming were not placed in the public inspection file for the period beginning with the third quarter of 1998 through the fourth quarter of 2000. The licensee reports that after reviewing its records for the relevant time period, it placed records regarding compliance with the commercial limits in the station's public file. The licensee maintains that for each quarter following the fourth quarter of 2000, documentation concerning commercial limits was placed in the station's public file in accordance with the Commission's requirements. Moreover, the licensee states that it discovered that TV issues/programs lists for the third and fourth quarters of 1998 had not been prepared or placed in the station's public file. The licensee asserts that it subsequently prepared and placed in the public file TV issues/programs lists for these quarters in November 2004.

III. DISCUSSION

5. Station WALB(TV)'s failure to place in its public inspection file TV issues/programs lists and records concerning compliance with the children's programming commercial limits constitutes a willful and repeated violation of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii). While corrective actions may have been taken to prevent future violations, this does not relieve it of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

6. Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture

² See 47 C.F.R. § 73.3526.

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

penalty.⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵

7. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee concedes that the station’s records concerning compliance with commercial limits on children’s programming for the third quarter of 1998 through the fourth quarter of 2000 and TV issues/programs lists for the third and fourth quarters of 1998 were missing from the public inspection file. Thus, the public file was not complete for a substantial period of time. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

8. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.⁷ Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission’s Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁹

9. The public inspection file rule serves the critical function of making available to

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that “[t]he term “repeated,” when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

⁷ 47 U.S.C. § 309(k).

⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

the public important information related to station operations. On balance, however, we find that station WALB(TV)'s violation of Section 73.3526 does not constitute a "serious violation" of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WALB(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283 and 1.80 of the Commission's Rules,¹⁰ Libco, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE of ten thousand dollars (\$10,000) for willful and repeated violations of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Commission's Rules as indicated above.¹¹

11. IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Libco, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

12. IT IS FURTHER ORDERED that, a copy of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at 2215 B Renaissance Drive, Suite 5, Las Vegas, Nevada 89119 and to its attorney of record, John S. Logan, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

¹⁰ 47 C.F.R. §§ 0.61, 0.283, and 1.80.

¹¹ 47 C.F.R. §§ 73.3526(e)(11)(i) and 73.3526(e)(11)(ii).

¹² See 47 C.F.R. § 1.1914.

13. Finally, IT IS ORDERED that, the application (File No. BRCT-20041130AOY) of Libco, Inc. for renewal of license for station WALB(TV), Albany, Georgia, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Acting Chief
Media Bureau